IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1967 of 1983
with
CIVIL REVISION APPLICATION No. 1968 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT Sd/=

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 :: NO

RATILAL O LODHIA

Versus

MATHURDAS LALJI @ BACHUBHAI LALJI SINCE DECD THRO HEIRS

Appearance

1. Civil Revision Applications Nos. 1967 & 1968 of 1983
MR PRANAV G DESAI for Petitioners
MR AR THACKER for JR NANAVATI for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/09/2002

ORAL JUDGEMENT

These two Revision Applications under section 29

(2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] are preferred against the common judgment and orders dated 30th April, 1983 passed by the learned Assistant Judge, Junagadh in Regular Civil Appeals No. 112 of 1980 and 121 of 1980. The Revision Application No. 1967 of 1983 has been preferred by the plaintiffs in so far as the suit for possession has been dismissed. The Revision Application no. 1968 of 1983 has been preferred by the plaintiffs in so far as the Court below has determined the standard rent of the suit premises to be Rs. 40/= per month.

The suit premises is part of a building situated at Chhaya Bazaar, Junagadh. The defendants-respondents are the tenants thereof. Part of the suit premises is being used for residence, while, in the other part of the suit premises, a Studio is being run i.e., part of the suit premises is being used for business purposes. The plaintiff-petitioner is the owner thereof.

It appears that the suit house belonged to one Shambhubhai Acharya. The suit house was given on rent to one Bhavanbhai, the brother of the defendant. Parts of the suit house were given away on rent to the plaintiff and one Dhirubhai Mehta. The suit house, sometime in the year 1954 or thereabout, was purchased by one Mohanlal Kurji, the uncle of the plaintiff. The plaintiff purchased the said house from the said Mohanlal Kurji in the year 1964 or thereabout. The defendant was the tenant of the suit premises even prior to the purchase of the house by above named Mohanlal Kurji. At the time the plaintiff purchased the house, the rent of the suit premises agreed upon was Rs. 40/= per month. On 5th March, 1975, under the writing [Exh. 69], the plaintiff informed the defendant that out of the money given by the defendant, a sum of Rs. 472=50p. was adjusted against the arrears of rent due for the period from November, 1971 to July, 1972. That the remaining sum of Rs. 27=50p. stood to the credit of the defendant and if the defendant sends another sum of Rs. 25/=, the same can be adjusted against the rent for the further period of one month. The plaintiff also requested that the rent for the months of August, 1972 to February, 1975 was outstanding and demanded remittance of Rs. 1,627=50 paise against such outstanding rent. Thereafter, on 5th May, 1975, the defendant was given the suit notice [Exh. 72] thereby terminating the tenancy and demanding the arrears of rent since August, 1972 at the rate of Rs. 52=50 p. per month. The said notice was duly replied to by the defendant on 19th May, 1975. The defendant denied

the allegations made by the plaintiff and claimed that the agreed rent of suit premises was Rs. 40/= per month and that the defendant was not in arrears of rent as alleged. The defendant also raised the dispute as to the standard rent and claimed that the standard rent of the suit premises should be less than Rs. 27/= per month. The plaintiff filed Civil Suit No. 600 of 1975 in the court of Civil Judge [JD], Junagadh for recovery of possession of the suit premises and the arrears of rent. The possession was claimed, inter alia, on the basis that the suit premises was not being used for the purpose for which it was rented; that the studio was closed and that the defendant was running a Studio at Keshod. The learned trial Judge under his judgment and order dated 31st July, 1980 determined the standard rent to be Rs. 52=50 paise and passed a decree for arrears of rent to the tune of Rs. 4,772/=., however, dismissed the suit as far as possession of the suit premises is concerned.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 112 of 1980 in so far as the decree for possession was refused and the defendant preferred Regular Civil Appeal No. 121 of 1980 in so far as the standard rent was determined to be Rs. 52=50 paise. Both the appeals were decided by the impugned judgment and order dated 30th April, 1983. The Civil Appeal No. 112 of 1980 preferred by the plaintiff was ordered to be dismissed. Feeling aggrieved, the plaintiff has preferred above Civil Revision Application No. 1967 of 1983. The Court below allowed Appeal No. 121 of 1980 preferred by the defendant. The standard rent was fixed at Rs. 40/= per month. Feeling aggrieved, the plaintiff has preferred the above Civil Revision Application No. 1968 of 1983.

Mr. Desai has submitted that it was the writing Exh. 69 which was the suit notice as envisaged under section 12 (2) of the Rent Act. The Court below has erroneously treated the notice Exh. 72 to be the suit notice. He has submitted that clearly a demand for arrears of rent was raised under the writing Exh. 69. The said writing was not responded to by the defendant within one month of the receipt thereof nor did the defendant raise dispute as to the standard rent within such period. The defendant did not pay the arrears of rent within one month from the date of the receipt of the said notice Exh. 69. The case was, therefore, covered by section 12 (3)(a) of the Rent Act and a decree for possession shall necessary follow. He has submitted that the Court below has erroneously relied upon the judgment of this Court in the matter of Khimji Bhimji Majithia v.

Taraben Lalji Soni [23 (2) GLR 114]. He has submitted that it was erroneous to hold that writing [Exh. 69] was not the notice as envisaged under section 12 (2) of the Rent Act because the said notice did not specifically mention that it was the last chance to pay the arrears of rent. He has submitted that the judgment in the matter of Khimji Bhimji Majithia [Supra] has been explained by this Court in the matter of Rambhai Jhenidas Panchal v. Lalitaben Wd/o. Ramanlal Panchal [23 (2) GLR 545]. He has submitted that under the said judgment, the court has categorically held that the suit notice does not require to mention that it was the last chance. Be that as it may, in any view of the matter, the writing Exh. 69 cannot be said to be the suit notice. As held by this Court in the matter of Shantaben Harilal Brahmbhatt v. Hasmukhlal Maneklal Chokshi [2001 (2) GLR 1615], the claim for recovery of possession of the suit premises should be preceded by a notice terminating the tenancy. Evidently, the writing [Exh. 69] does not terminate the tenancy as envisaged in section 111 of the Transfer of Property Act. In my view, therefore, the writing [Exh. 69] by no stretch of imagination can be said to be the suit notice under section 12 (2) of the Rent Act. Moreover, the said writing was never intended to be the suit notice by the plaintiff either as it is evident from the evidence of the plaintiff and the conduct of the plaintiff in giving the suit notice on 5th May, 1975. I, therefore, hold that the learned Judge has rightly held the suit notice [Exh. 72] to be the notice as envisaged under section 12 (2) of the Rent Act.

In the suit notice [Exh. 72], the plaintiff has made a demand for arrears of rent @ Rs. 52=50 paise per month. However, indisputably, the said rate was not the agreed rent. In the course of trial, the plaintiff tried to make out a case that there was an oral agreement raising the monthly rent to that of Rs. 52=50 p. The Court below has discussed the evidence in detail and has recorded a finding that the agreed rent was Rs. 40/= per month and not Rs. 52=50p. as demanded by the plaintiff. If the agreed rent were Rs. 40/= per month, any demand made in excess of the agreed rent under the suit notice would be bad and illegal. The suit based on such notice would be liable to be dismissed on that ground alone.

Mr. Desai has strenuously urged that since the defendant failed to pay the rent in answer to the notice [Exh. 69] or to raise a dispute regarding the standard rent, the case should fall within the purview of section 12 (3)(a) of the Rent Act and a decree for possession

should necessarily follow. In support of his contention, he has relied upon the judgments of this court in the matters of Sakerlal Nathubhai & Ors. v. Chhotubhai Navalbhai [21 GLR 371]; of Jagmohan Ratilal Sheth v. Jayantilal Laxmishanker [14 GLR 161]; of Vajubhai Vashram v. Parikh Mohanlal Ranchoddas [19 GLR 1007]; of Gaznafarali Fatehali Hakim v. CRatilal Maganlal Panchal [1998 (1) GLH 490] and of Heirs of Kashiben C. Chhaganlal D/o. Chimanlal Chhaganlal vs. Heirs of Babulal Kalidas [2001 (2) GLR 3120]. As the argument of Mr. Desai is based on the premise that the case is covered by section 12 (3)(a) of the Rent Act, I need not discuss the judgements relied upon by Mr. Desai. As I have held that writing [Exh. 69] cannot be said to be the suit notice as envisaged under section 12 (2) of the Rent Act and as in answer to the suit notice [Exh. 72], the defendant had raised the dispute as to the standard rent, the case would clearly be covered by section 12 (3)(b) of the Rent Act. Admittedly, the issue as to the standard rent was decided by the trial Court alongwith the other issues under the final judgment and decree. Hence, since the standard rent was not determined pending the trial, the defendant would be entitled to protection under section 12 (3)(b) of the Rent Act till such standard rent is determined.

The Court below has held that the agreed rent was Rs. 40/= per month and has accordingly determined the standard rent to be Rs. 40/= per month. The Court has further recorded a finding that if Rs. 40/= were the standard rent, the defendant has deposited such rent regularly in the Court pending trial and also pending appeals. In view of the said finding recorded by the court below, the Court has rightly held that the defendant was entitled to protection against eviction under section 12 (3)(b) of the Rent Act and has rightly refused to pass decree for possession on the ground of arrears of rent.

As far as the plaintiff's case for non user is concerned, it is an admitted fact that the suit premises was being used for residence as well as for business. Indisputably, the defendant still resides in the suit premises. The suit premises has thus been continuously used for the purpose of residence. Hence, i
said to have been put to non-user as envisaged in section 13 (1)(k) of the Rent Act. In my view, therefore, the plaintiff could not have claimed possession on either of the grounds urged by him. The Courts below have rightly rejected the claim of the plaintiff for possession of the suit premises. The standard rent of Rs. 40/= fixed by the

Court below also does not call for interference.

In above view of the matter, both the Revision Applications are dismissed with costs. Rule nisi issued in each of the Revision Applications is discharged.

sd/=
[Ms. R.M Doshit, J.]

Prakash*